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SENSITIVE  
SIPDIS

E.O. 12958: N/A

TAGS: MARR MOPS MP PBTS PHSA  
SUBJECT: PIRACY PROSECUTION - DEMARCHE REQUEST

¶1. (SBU) Summary: This is an action request (see paragraphs 2 and 3). Kenya currently has more than 100 suspected pirates in custody, either awaiting trial or on trial. The burden needs to be shared more broadly. The United States will continue to press victim states to take responsibility for prosecution but is also pursuing alternative transfer/prosecution arrangements within the region. Based on input from Post, we understand Tanzania does not currently have the domestic legal framework to prosecute pirates in cases without a Tanzanian nexus, and may not have the political will to amend their law to expand their jurisdiction or to assist the United States by accepting piracy suspects for prosecution. Nevertheless, we believe it is appropriate to engage the GoT on Tanzania's potential role in pirate prosecution and our interest in entering into a transfer/prosecution MoU with them, to take effect when they have made the necessary changes to their domestic law. End Summary.

#### Action Request

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¶2. (SBU) Post is requested to demarche host government officials as soon as possible with the following objectives:

--to express our strong interest in Tanzanian legislative reform that would recognize piracy as a universal crime that can be prosecuted in national courts regardless of whether the case has a nexus to Tanzania.

--if the GoT is interested, offer USG support to identify technical assistance to review and/or draft the necessary legislation to expand the jurisdiction of their domestic courts to enable prosecution of acts of piracy, even where a Tanzanian nexus is absent.

-- to express our strong interest in pursuing conclusion of a Memorandum of Understanding with the United States to facilitate the transfer of suspected pirates to Tanzania for the purposes of prosecution, and gauge GoT receptivity to the proposal.

-- if the GoT is interested, Post should share the draft MoU text and accompanying explanatory notes (sent via e-mail) with the GoT and propose that GoT and U.S. experts meet via video-conference within 10 days to discuss the text and address questions the GoT authorities may have.

#### Suggested Points to Make

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¶3. We recognize that the economic and security interests of Tanzania are being negatively affected by piracy, particularly as the range and sophistication of pirate operations grow.

-- We are pleased that we have established a strong partnership with Tanzania with regard to maritime security and note the presence of U.S. forces patrolling and protecting the seas off the Horn of Africa. We are committed at the most senior levels of government to combat piracy through actions such as our Naval presence and through our efforts to address instability in Somalia -- the root cause of piracy in the region.

-- A key challenge our Naval patrols face is transfer of suspected pirates that they interdict. It is imperative both from the point of view of justice and the core mission of the patrols that suspects not be held for long periods while transfer options are explored.

-- We believe that the first option for prosecution should be the victim states, be it the flag state of the pirated ship, the ship owner, or the country or countries with crew on board. We will continue to urge affected states to accept suspects for prosecution. However, when such options are not available, a second best solution is to try suspects in the region, closer to their home, and where piracy is harmful to commercial and maritime security.

-- The United States, the United Kingdom, and the European Union have MoUs with the Government of Kenya regarding transfer and prosecution of suspects, the UK has a similar MOU with the Seychelles, and the EU is in the process of finalizing an arrangement with the Seychelles. However, it is important that the prosecution effort be shared more broadly.

-- We are very interested in exploring the conclusion of an MoU with Tanzania that would set out a framework to facilitate the transfer of suspected pirates to Tanzania for purposes of prosecution.

--We recognize that the GoT may need to make some legislative changes to enable its courts to prosecute cases of piracy when there is no nexus with Tanzania. If the GoT is interested, we will encourage international efforts to provide Tanzania with technical assistance to review and/or draft the necessary legislation.

-- As we have done with respect to Kenya, we will continue to impress upon victim states their responsibility to prosecute, or, if they are unable to do so, to provide assistance and support to the prosecuting state. In our experience, one key area of need is facilitating the presence of witnesses at trial and defraying related expenses. The international community is providing support to Kenya for this and other aspects of piracy prosecution, and we would be pleased to discuss these matters with Tanzania in more detail.

-- We note, as well, that the U.S. forces involved in counter-piracy efforts have been well-trained in evidence collection. As we have done with Kenya, it is our expectation that any case presented to Tanzania would be accompanied by a well-developed package of evidence for your prosecutors. If we are able to conclude an MoU with the GoT, we would ensure our forces have an understanding of any special requirements your courts need in terms of evidence.

-- Also as with Kenya, we would look forward to discussing with you potential constraints on the capacity of the Tanzania court or prison systems.

-- As appropriate: if you are interested, we have a proposed text for your review and our legal experts will be available for follow-on discussion via video conference within the next 10 days.

¶4. Please slug responses for: L/LEI Jennifer Landsidle; L/OES Kevin Baumert; AF/E: Susan Driano and Justine Treadwell.  
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